IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.1278 OF 2003
IN
SUIT NO.1197 OF 2003

Intec Polymers Ltd.)

a Company incorporated under)

athe provisions of the Companies)

Act, 1956 having its registered)

office at 405, Raheja Chambers,)

Nariman Point, Mumbai-400 021.)..PLAINTIFF

Versus

1. Mr. Rajendra Eknathrao Tambe)

residing at or carries on)

business at 105, Ambika)

Niketan Society, Haria Park,)

Village Dungra, Vapi East,)

Gujarat, Pin-396 195)

2. Mr. Arvind Janardan Kirange,)

residing at or carries on)

business at B-303, Sahajanand)

Co-op. Socy., Vapi -Silvassa)

Road, Haria Park, VIllage)

Dungra, Vapi East, Gujarat)

Pin-396 195)

3. Mr. Lalitkumar Laxman)

Choudhury, residing at or)

carries on business at New)

Gunjan Housing Society,)

Block No.34, Room NO.724,)

GIDC, Vapi-East, Gujarat,)

Pin-396 195.)

4. M/s.Polygel Technologies)

India Pvt. Ltd., a Company)

incorporated under the)

provisions of Companies Act)

1956 having its registered)

office at 1st Floor, Mehta)

House, Apollo Street,M.S.Marg)

Fort, Mumbai-400 023.)..DEFENDANTS

WITH

NOTICE OF MOTION NO.1688 OF 2003

IN

SUIT NO.1197 OF 2003

Intec Polymers Ltd.)

a Company incorporated under)

the provisions of the Companies)

Act, 1956 having its registered)

office at 405, Raheja Chambers,)

Nariman Point, Mumbai-400 021.)..PLAINTIFF

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India P. Ltd.,)

1st Floor, Mehta)

House, Apollo Street,M.S.Marg)

Fort, Mumbai-23.)..DEFENDANTS

Dr.Virendra Tulzapurkar with Amit Jamsandekar i/b. M/s.Pravin Mehta & Co., for the Plaintiffs
Mr.R.S.Jaisinghani i/b. Ms. Monika Sakharam for Defendant Nos.1 to 3.
Mr. Ravi Kadam with Mr. S.K. Sen i/b. Ms.Kerban Anklesaria, for Defendant No.4.

CORAM: F.I. REBELLO, J.

DATE : 23rd December,2004

JUDGMENT:

1. The plaintiff has filed the suit against the defendant Nos. 1 to 3 who are the former employees and defendant No.4 which commenced manufacturing Organic Titanates from March, 2002. For the sake of brevity they will be referred to as the said products. The suit by the plaintiff is to restrain the defendants and others claiming through them from in any manner utilising, using, imparting, disclosing or taking unfair advantage of the confidential information, more particularly described in paragraph 4(c) of the plaint. It is the case of the plaintiff that they had developed the information as set out in paragraph 4(c) of the plaint after years of research and development.The plaintiff has developed secret processes and/or trade secrets and/or confidential information and the plaintiff is the owner of the same. The plaintiff by using its trade secret and/or secret process and/or confidential information is manufacturing and marketing high quality products with low manufacturing cost. The confidential information has placed the plaintiff on a much higher footing than its competitors in the world chemical market. The confidential information developed by the plaintiff to produce and market its products is neither purchased from other companies nor obtained from any consultants. After substantial efforts and carrying out research on the basic technology, many trials over a long period of time and after considerable expenses, the plaintiff has

developed the technology to manufacture the said products. It is manufacturing and marketing the products with the help of its eight specialised laboratories and after engaging 20% of its skilled employees in research and development. On account of years of research and development the plaintiff has acquired substantial goodwill for its product in the domestic as well as international market. The said information of the plaintiff is not available in the public domain nor is it available for sale anywhere in the world. Further relief is also sought to restrain the defendants or any person claiming through them from manufacturing the product or its variants and mixtures or any other products of the plaintiff directly or indirectly by using the said information. Relief is also sought that defendants and their representatives, etc., should be restrained from in any manner contracting plaintiff's ex or current employees or giving them employment with the defendants or their servants, agents, representatives, etc. The other reliefs need not be adverted to.

2. The plaintiff took out Motion being Notice of Motion No.1270 of 2003. By order dated 25th April, 2003 the learned Judge was pleased to grant ad-interim relief in terms of prayer clause (a). It further transpires that pursuant to Judge's Order Receiver came to be appointed to do certain acts. By order dated

13th June, 2003 certain directions were issued to the Receiver. On behalf of the plaintiff statement of their Counsel was recorded that they will deposit in Court their own information mentioned in paragraph 4(c) of the plaint within a period of four days from 13th June, 2003. The defendants thereafter by Notice of Motion No.1688 of 2003 had applied for setting aside the order of 24th April, 2003 and also prayed that the order dated 25th April, 2003 be stayed. As the pleadings of the parties were complete both the Motions have been heard. Based on the pleadings the case of the plaintiff is that in the course of the employment of defendant Nos. 1 to 3 with the plaintiff, confidential information was disclosed to them and that has been used by the defendant Nos. 1 to 3 as the employees of defendant No.4 and based on the aforesaid confidential information the defendant No.4 was able to manufacture the products of the specifications mentioned in Exhibit "H" to the plaint. The defendant No.1 resigned from the service of the plaintiff on 21st November, 2001. Defendant No.2 had resigned on 28th January, 2002 and defendant No.3 had resigned on 4th February, 2002. It is the further case of the plaintiff that till March, 2002 defendant No.4 was manufacturing only copper cable fitting and flooding jelly, fibre optic cable fitting and flooding jelly, cable spicing jelly and cable clearing liquid and it is only in March, 2002 as noted earlier defendant No.4

started manufacturing organic titanates of the specifications mentioned in Exhibits H and K to the plaint. In August, 2002 the defendant NO.4 started contacting the plaintiff's customers and offering the same products at reduced price by 20%. The plaintiff's customers informed the plaintiff about defendant No.4 contracting them and offering price at 20% lower than the plaintiff's price. The plaintiff's customer again informed them on 10th January, 2003 about contacting them and offering price at 20% lower than the plaintiff's price. Some employees of the plaintiff on 25th January, 2003 informed them that defendant No.1 was asking them to join defendant No.4. As such the plaintiff came to file a suit on 31st March, 2002. The case of the plaintiff is that unless the plaintiff's confidential information is used and applied it is not possible for the defendants to manufacture the said products of the specifications mentioned in Exhibit H. The defence of the defendant No.4 through the affidavit of Luv Shah, Managing Director is that it is derived from patents in the public domain and that there is nothing secret or confidential about the process of manufacturing the said products. Based on the pleadings and the law involved the plaintiff contends that the following issues arise for determination.

1. Whether the confidential information which is filed in this Court in sealed envelope pursuant to the

order dated 13th June, 2003 being secret is not available in any patent or in any other source which is in the public domain.

2. Whether following the defendants' process described in Exhibit A to the affidavit of Luv Shah and Dr. Gopinathan by itself is enough to produce the said products i.e. organic titanates of the specifications mentioned in Exhibit H to the plaint;

3. Whether the use and application of the plaintiff's confidential information submitted to this Court in a sealed envelop is required to be used or applied for the purpose of manufacturing the said products of the specifications mentioned in Exhibit H to the plaint.

4. Whether the plaintiff has carried out any improvement or improvisation to the plant and equipment, the information about which is secret and confidential;

5. Whether the defendants' plant and equipment are made or worked only on the basis of the information which is in public domain or whether the defendants' plant and equipment are based on the secret and confidential information of the plaintiff filed in this Court in a sealed envelop.

6. Whether defendant Nos. 1, 2 and 3 in fact received any secret and confidential information from the plaintiff while they were in the plaintiff's employment.

7. Whether defendant Nos.1, 2 and 3 are obliged to keep the confidential information secret and in confidence and not to disclose the same to anybody.

8. Whether the defendant No.4 is using the aforesaid confidential information of the plaintiff for manufacturing the said products.

3. On the other hand on behalf of the defendant No.4 it is set out that the company was incorporated in the year 1998, and commenced manufacture of various types of Telecom Cable Gels like cable Filling and Flooding compounds, Cable cleaning liquids, Splice filling compounds and Thixotropic water swellable compounds used by both PIJF and Optic Fibre Cable manufacturers. The products are used in the manufacture of telecom cables to prevent water seepage and corrosion. The technology for the products was developed by a Team of Chemical Experts and International Consultants and the project design and consultancy was developed in-house by a team of Chemical Engineers and Chemists. The defendant NO.4

also has entered into a marketing arrangement with a U.K. based company UNIGEL Ltd., for marketing of Telecom Cable gels in export markets. The defendant No.4 has emerged as the market leader for Cable Gels in India and is steadily increasing its exports. Defendant No.4 has developed a strong R. & D capability in the field of specialty chemicals in the last 3 years of operations. Its products are regularly exported to more than 10 countries. Apart from the business of manufacturing Telecom Cable gels and organic titanates it manufactures various specialty chemicals, ethyl Silicates and Organo Tin Compounds and Mercapto Compounds, Adhesives and Sealants, Speciality Oils, Lube Additicves and Blended Waxes, Petroleum Jellies and Greases. The defendant No.4 has grown exponentially in the years of its operation and now has a turnover of Rs.2742.92 lakhs with net profit of Rs.241.63 lakhs. The defendant NO.4 is the only company in the world to manufacture all types of cable jellies under one roof and is the largest exporter of cable gels in India. It is also pleaded that the defendant No.4 has a strong in-house Research & Development Department with qualified Chemists, Process Engineers and Application Engineers and carries out extensive research for the purpose of developing new products which are utilised by the wire and cable industry. Apart from in-house research and development efforts, Defendant No.4 has also relied on experts and

consultants in the field of speciality chemicals. It is then set out in May, 2000 though the defendant NO.4 had conducted some lab trials in respect of organic titanates in 1999 the defendant decided to include organic titanates in their project array only in April, 2000 after meeting various potential consumers of organic titanates at the International Wire & Cable Trade fair in Dusseldorf. In view of the fact that Defendant NO.4 was engaged in the manufacture of products used by the wire and cable industry, the manufacture of organic titanates (which are specialty chemicals used predominantly in the wire and cable industry) was a logical extension of the defendants business. In September, 2000 defendant No.4 commenced lab trials with a view to commercial production of organic titanates. In April, 2001 the defendant No.4 engaged the services of Mr. Ravikumar Chaturvedi, a Project Consultant with 27 years of experience, to assist defendant No.4 in procuring and setting up plant and equipment with the capability of manufacturing organic titanates as well as other products. In May, 2001 Defendant No.4 engaged Dr. C. Gopinathan, a Retired Emeritus Scientist from National Chemical Laboratories (NCL) as a Consultant for setting up a process for manufacture of commercial production of organic titanates and their derivatives. Dr. Gopinath holds a Ph.D., in the organometallic chemistry of titanium and has been involved in research relating to

organometallic compounds including organic titanates for more than 40 years. Between 1st December, 2001 to 15th February, 2002 the defendant Nos.1 to 3 joined the defendant No.4 by which time most of the equipment for the facility had already been procured and civil Construction and modification work was already well under way before defendant Nos. 1 to 3 joined defendant No.4. In March, 2002 the defendant No.4 commenced commercial production of organic titanates. It is set out that the plaintiffs are seeking reliefs on the basis that alleged confidential information belonging to the plaintiffs relating to organic titanates had been disclosed by defendant Nos. 1 to 3 to defendant No.4. The particulars of the alleged confidential information were not disclosed in the plaint. The plaint also seeks reliefs in respect of polyvinyl formal polymer, polyvinyl butyral polymer and other products of the plaintiffs which are not even manufactured by the defendant No.4. These reliefs are on the basis of an alleged apprehension that defendant No.4. would lure away other employees of the plaintiffs who are privy to alleged confidential information relating to the said products. It is then pointed out that the plaintiffs applied for injunctive relief and for appointment of Court Receiver. The Court Receiver had issued various directions. On 12th May, 2003 the Court Receiver's representative visited the premises with the plaintiff's representative and

their Advocates at which time no representative of the defendant No.4 authorised to respond to requests for documents was present. This was recorded in the report dated 13th May, 2003. It is pointed out that though the order of 25th April, 2003 directed only the documents in paragraph 4(c) relating to organic titanates be taken over by the Court Receiver if in defendant No.4's possession, the plaintiffs sought to information and documents relating to organic titanates belonging to the defendants and this demand was clearly beyond the scope of the order dated 25th April, 2003. The plaintiffs obtained an exparte Judge's Order from Chamber Judge directing the Court Receiver to take forcible possession of the documents and information set out in paragraph 4(c) of the plaint through a technical expert from her panel along with the representative/technical persons of the plaintiff and to give inspection of plant, equipments, machinery, raw materials etc., and to take inventory thereof. It is the contention of the defendants or the defendant No.4 that the ex-parte Judge's Order travelled far beyond the scope of the order dated 25th April, 2002. On 10th June, 2003 various documents and records of defendant No.4 were seized and it is in these circumstances that the defendants applied for setting aside the exparte order dated 25th April, 2003. It is then pointed out that the report of Kishore H. Parkar filed on 23rd June, 2003 travelled beyond the scope of both the

exparte orders obtained by the plaintiffs. It may be mentioned that Mr. Parkar is an Architect. Various defects and deficiencies in the said report are pointed out.

4. The defendant Nos. 1 to 3 filed their written statement. It is their contention that though they were required to sign a confidentiality agreement during the course of their employment with the plaintiffs, no information of a confidential nature was disclosed to these defendants nor were these defendants informed that any information acquired by them was confidential or a trade secret. In any event, it is pointed out that the plaintiffs have not disclosed any information to them in the course of the employment and had no contact whatsoever with defendant No.4 during the employment with the plaintiff except for enquiries that these defendants made regarding vacancies at defendant No.4 prior to their resignation. It is their case that they did not approach the defendant No.4 in the course of their employment with the plaintiff offering any information as alleged nor did they contact the defendants in any way and they had the plaintiffs for better prospects. When the defendants informed the plaintiff that they wished to leave their employment, they became hostile and demanded that these defendants sign agreements undertaking not to enter into employment with any company manufacturing chemical

products, but the defendants declined to do so since their background and experience was only in the chemical industry. It is their case that they could not even disclose in their resignation letter the fact that the defendants wished to take up employment elsewhere for fear that their dues would not be paid by the plaintiff. They were recruited by defendant No.4 after going through their recruitment procedure and interview. It is their case that the defendant No.4 was already in the process of setting up a line for manufacture of organic titanates when the defendants joined the defendant No.4. Soon after joining defendant No.4, the defendants underwent a month long orientation and training programme organised by the defendant No.4 for new employees. During this training programme the defendants were given formal and theoretical training on various aspects of all products manufactured by defendant No.4 including Telecom Cable gels, 2 Mercaptobenzimidazole, Rubber adhesives, polyurethane adhesives, antistatic coning oils and organic titanates. These aspects included their production procedure, raw materials used, batch timings, packing instructions, handling instructions, etc. Systematic training of a similar nature was not imparted to the defendants during their earlier employment with the plaintiff. Consequent thereto the defendants have acquired far more information and expertise regarding production techniques, processes

and applications of various products including organic titanates during their one year tenure with the defendant No.4 than during their 7 year tenure with the plaintiffs where a system for training and sharing information was absent. It is also pointed out that during their employment with the plaintiff they were not in charge of procurement or sales for which the plaintiff had designated personnel and had no access to supplier or customer information including, inter alia, pricing. It is further pointed out that they had no involvement in any research or development efforts of the plaintiffs, product development process, product trials, laboratory testing of products or quality control. They were only concerned as operational personnel with running the equipment and machinery for manufacture of organic titanates. It is pointed out that during the course of employment they are not confined to the production of organic titanates and include involvement in the production of other products. Dealing with the various averments it is the case of the defendant Nos. 1 to 3 that they were not imparted with any special and/or confidential information about any process nor they have disclosed the process to defendant No.4 and on the contrary they have acquired the skills when they were employed with the defendant No.4.

5. On behalf of the plaintiff it is submitted that

the stand taken by the defendants is inconsistent. There is material on record to show that defendant Nos. 1, 2 and 3 had received confidential information from the plaintiff. Defendant Nos.1,2 and 3 are bound by the negative covenants contained in clauses 3.1 and 3.2 of their respective Agreements with the plaintiff and that the defendant No.4 is manufacturing organic titanates by use of the plaintiffs confidential information.

. On behalf of the plaintiffs their learned Counsel contends that the plaintiff is entitled for interim relief as from the material on record and from the affidavits filed by the defendants it is clear that (1) the stand taken by defendant is inconsistent; (2) there is material on record to show that defendant Nos. 1, 2 and 3 had received confidential information from the plaintiff; (3) the defendant Nos. 1, 2 and 3 are bound by the negative covenants contained in clauses 3.1 and 3.2 of their respective Agreements with the Plaintiff; (iv) Defendant No.4 is manufacturing organic titanates by use of the plaintiff's information. Reliance is placed on various judgments, which will be adverted to in the course of the judgment.

6. It is submitted on behalf of the defendants that the plaintiffs are disentitled to the reliefs

prayed for inter alia for the following reasons:-

1. The plaintiffs have abused the process of the Court;

2. The plaintiffs do not satisfy the four requirements that the plaintiffs must address to succeed in any breach of confidence action;

3. The plaintiffs' case as argued and pleaded is inconsistent and self contradictory;

4. The defendant No.4's case that their plant and process have been set up independently on the basis of advice of independent experts skilled in the art and/or information available in the public domain is correct and required to be accepted at the interlocutory stage;

5. There is no dilution of the defence and the defendants subsequent affidavits merely explain that the information referred to in the reply affidavits would be obvious to persons skilled in the art;

6. The well settled interlocutory consideration of prima facie case, balance of convenience, irreparable injury weigh heavily

in favour of the defendants.

. Learned Counsel for the defendants has further contended that plaintiffs are not entitled to any equitable relief by way of interim injunction for the reasons as set out in paragraph 5 of the order. The contention urged by the parties will be dealt with to the extent they are necessary for deciding an application for interim relief.

7. Before going into the merits of the matter the 1st contention which has to be considered is whether the plaintiffs have abused the process of the Court. The defendants have raised this contention on the ground that the plaintiffs obtained a Judge's order on 10th June,l 2003 without notice to the defendants and had sought reliefs much more than what was granted by this Court by order dated 25th April, 203. It is pointed out that on 6th May, 2003 itself on behalf of the defendants their Lawyer had intimated the plaintiffs that the information which was demanded was far beyond the scope of the order dated 25th April, 2003 and was clearly an attempt to over-reach the order passed by this Court. By further letter dated 15th March, 2003 they had informed the Court Receiver that they had no document and/or records in their possession pertaining to any alleged secret or confidential information of the plaintiffs. Inspite of that the

plaintiffs obtained Judge's order from the Chamber Judge exparte, without notice to the defendants which travelled beyond the scope of order dated 25th April, 2003, and the subsequent acts of the Court Receiver's representative in seizing documents and records belonging to the defendant No.4 and inventory of plant and machinery and taking photographs was clearly beyond the scope of the order. The plaintiffs by so doing over-reached the exparte order obtained from this Court in an attempt to create false evidence without notice to the defendants and suppressing the Defendant's Advocate's letter dated 15th March, 2003. It is submitted that the plaintiffs have now moved under Order 39 Rule 2A alleging that the defendants continue the manufacture of organic titanates in breach of the injunction order dated 25th April, 2003. Reliance is placed on the judgment in the case of Ocular Sciences Ltd. & Anr. v. Aspect Vision Care Ltd. & Ors., (1997 RPC 289, to contend that the failure of the plaintiffs to particularise its confidential information properly would lead the Court to infer that the purpose of the litigation was harassment and that the action could be struck off as an abuse of process on this ground alone.

. Parties are before this Court. The plaintiffs obtained orders from this Court. True the Judge's order was taken ex-parte. That, however, by itself

would not mean that there is an abuse of the process of the Court and/or the actions of the representative of the Court Receiver, who has prima facie acted in terms of the order, can be said to amount to an abuse of the process of the Court. At any rate this would be a factor which the Court can consider as to whether the injunction granted should be vacated or not. Merely because the plaintiffs have moved under Order 39 Rule 2A by itself cannot be said to result in abuse of the process of the Court as breach of an order of the Court will be independently dealt with when the said Motion comes up for final hearing. The tests for holding whether there is breach are different than from the grant of injunction or confirmation of the injunction.

8. Having said so, let us now consider whether the defendants have taken inconsistent stand or as stated by the defendants that there is no dilution of the defence and the defendants subsequent affidavits, merely explain that the information referred to in the reply affidavits would be obvious to persons skilled in the art. Further whether the plaintiffs case as argued and pleaded is inconsistent and self contradictory. The plaintiffs have pointed out that the original case as pleaded by the defendant was that the process for manufacturing of the organic titanates was within the public domain and that is readily available on the internet and various patents and other publications.

The information disclosed in the said patents is sufficient for the manufacture of Organic Titanates of the desired quality and the defendants stand has been set out in the affidavit of Luv Shah and particulars set out therein. The Experts who have filed the affidavit on behalf of the defendant No.4 have taken similar stand. The plaintiffs contention is that when it was pointed out that the patents are in general terms and unless specifics are reached or provided for, which are the result of research done by the plaintiff, the said products cannot be made, the defendants diluted their stand and in subsequent affidavits they admitted that the information in the patent is not sufficient to achieve the product of the desired specifications. It is then pointed out that the defendant No.4 sought to explain that they had perfected the process for the manufacture of organic titanates by conducting lab-trials and pilot runs, inter alia, under the guidance and supervision of Dr. Gopinathan and Ravi Chaturvedi. The plaintiffs, prima facie, therefore, have been able to establish that the information contained in the patents by itself would not be sufficient to produce the product of the desired specifications and something more was required to be done to achieve the said result. That something more is the confidential information and unless that confidential information is applied or used, the defendants cannot manufacture their products of the

desired specifications. In fact the various averments in the original affidavit of Luv Shah was that the manufacture of organic titanates is a matter within the public domain and is readily available in various patents and other publications and considering the vast expertise of Dr. Gopinathan in the field of Organic Titanates the defendants was able to quickly move from Laboratory trials to commercial production. The defendants relied on the expertise of Dr.Gopinathan and Ravi Chaturvedi, who is a project consultant with 27 years of experience in the chemical and pharmaceutical industry and was engaged to assist the defendant NO.4 in procuring and setting up plant and equipment with the capability of manufacturing organic titanates as well as other products. Dr. C. Gopinathan is a retired emeritus scientist from National Chemical Laboratories and holding a Ph.D. in the organometallic chemistry of titanium and has been involved in research relating to organometallic compounds including organic titanates for more than 30 years. Dr. Gopinathan was engaged as a consultant for setting up a process for manufacture of commercial production of organic titanates and their derivatives. The plaintiffs have been able to show that from the affidavit of Dr. Gopinathan dated 12th July, 2003 wherein it is pointed out that the patent will not describe any equipment used in a process which is conventional, the use of which would not be obvious to any person skilled in the

art. Equally the patent will not describe at length the procedure for filtration or distillation in the manufacture of organic titanates though the patents will undoubtedly indicate the need for these steps in the process. The stand of Luv Shah, Director was that they had perfected the process for the manufacture of organic titanates by conducting lab-trials and pilot runs, inter alia, under the guidance and supervision of Dr. Gopinathan and Ravi Chaturvedi. The Court Receiver's report, it is pointed out by the plaintiffs, would show that the plant and equipment of the defendants contains the plaintiffs modifications, improvements, etc., which are set out in the confidential information filed in this Court in sealed envelope. The stand of the defendant No.4 is that all the raw materials are named in the patents. Similarly, numerous other materials, each of which can be used or substituted, are also mentioned in the various patents. Use of different materials will lead to different purity and properties especially colour and clarity. The defendant NO.4 has pointed out that from the numerous materials, the defendant NO.4 claims to have arrived only those five items (TiC14, NH3, Hexane, Ammonia, Butanol/Iso Propyl Alchohol which the plaintiff uses. The defendants have not brought on record any material which was used or treated in lab trials or in any development process. Nor has the defendants produced any material to show the results of

the R. & D. Department in purifying the material for production of Organic Titanates of the purity and standard manufactured by the plaintiff. If this stand of the defendant is accepted it would mean that the specific materials are ostensibly arrived at by logic alone without any material to justify their selection. In an attempt to cover this obvious problem, Dr.Gopinathan arbitrarily included Pentane (a Solvent which the plaintiff does not use) in the Exhibit A process. Admittedly, pentane cannot be used unless the reaction temperature is below 36 deg. C. Since the reaction temperature is directed to be 45-50 deg. C. pentane admittedly cannot be used. It will be clear that this is clearly an attempt to dishonestly introduce differences. The plaintiffs pointed out that NCL process is a completely different technology. The plaintiffs have pointed out that Dr. Gopinathan whose field of expertise is in titanates did not come to any of these conclusions while working for NCL upto 2001. The NCL process is a completely different technology and that after leaving NCL, he could not have suddenly acquired the ability to deduce a copy of the plaintiffs technology/confidential information from public domain material. No material has been placed to show any research done by Dr. Gopinathan in the matter of plant specifications, etc. The plaintiffs have been able to pointed out that the defendants case regarding the specifications was that if a comparison is made with

the specifications issued by other manufacturers of organic titanates and by the plaintiffs and defendant No.4, the same will be identical The defendants case is that the specifications for manufacture of organic titanates are identical and there is nothing particular about any process for achieving those specifications. This stand is to be found in various affidavits filed by the defendants. Specifications have two aspects. Some of the heads of specifications are not normally used and are used by the plaintiff only because a particular customer requires it. These heads will not be found in any of the public domain information relied upon by the defendants and are a straight copy of the plaintiffs tests. The second aspect relates to purity of the finished goods. No person can produce absolutely pure finished product for marketability and price will vary with the level of purity. The plaintiffs entire technology is designed to achieve the highest levels of purity possible. In fact, the level of purity is the only crucial aspect. The plaintiffs, have, therefore, been able to show that the defendants have been unable to show that on account of any research carried out by them they were able to reach the same purity as has been obtained by the plaintiffs. The plaintiffs, therefore, have been able to show that firstly that the defendants have shifted their earlier stand and from the material which has been used the defendants are using the same process which the

plaintiffs are using for making the organic titanates of the same purity as that of the plaintiffs purity.

. It is no doubt true that the defendants tried to rely on the expertise of their Consultant Ravikumar Chaturvedi and Dr. C. Gopinathan. From the material on record it is clear that as per the balance sheet of the defendant No.4, that the amount spent on research between 1st April, 2001 and 31st March, 2002 was a sum of Rs.16,883/-. It is no doubt true that the defendants have sought to point out that they have an Inhouse Research. Then material ought to have been placed before the Court at the time of filing affidavit at the very first instance showing what results had been achieved by the R. & D. Department before Chaturvedi was appointed as Consultant in April, 2001 or the expertise of Dr. Gopinathan was used after May, 2001. There is none. On the contrary the stand in the 1st affidavit as explained earlier was that the construction of the plant and the manufacture of organic titanates was based on patent and material otherwise available in the public domain.

. Considering the material on record it must be held that the plaintiffs have been able to show that the stand of the defendant is inconsistent. On the other hand there is nothing on record to show that the stand of the plaintiff is inconsistent and/or

contradictory.

. No doubt reliance was placed in the Judgment of **Ocular Sciences Ltd. & Anr. v. Aspect Vision Care Ltd.** (supra) of Laddie J., to point out that the rules relating to the particularity of pleadings apply to breach of confidence action as they apply to all other proceedings as it is well recognised that breach of confidence action can be used to oppose and harass competition and ex-exmployees and the Court in these circumstances ought to direct the plaintiff to give full and proper particulars of all confidential information on which they intend to rely in the proceedings and if the plaintiff fails to do so, the Court may infer that the purpose of the litigation is harassment rather than the protection of the plaintiffs right and may strike out the action as an abuse of the process of the Court. But as noted by the Court of Appeal in Printers and Finishers Ltd. V. Holloway, Wesseley, Penny, Vita-Tex Ltd., 1961 (4) R.P.D. & T. 77 the Court must also bear in mind the need to properly protect the plaintiffs as regards the secrecy of their processes. Reliance may also be placed in the case of Amber Size and Chemical Company Ltd. vs. Menzal, 1913 2 Ch.239, wherein it was held that if the Court is satisfied that there is a secret process and that the ex-servant has learnt a material part of it during his employment and has made an improper use of

the knowledge so obtained, it can grant an injunction, although the actual details of the secret process have not been disclosed if it comes to the conclusion that the ex-servant has learnt a material part of it during his employment and he has made an improper use of the knowledge so obtained. No doubt the defendants pointed out to the judgment of the Court of Appeal in **John Zink Company Ltd. v. Wilkinson and Anr., 1973 R.P.C. 717,** where in an application for better particulars, the Court directed that the particulars be given before defence on the terms that the particulars be not filed with the pleadings and that the defendants undertook to make or permit no use of them, save such use as was necessary for the purpose of the proceedings.

. In the instant case considering the discussion earlier, in my opinion at this stage, considering that the secret process is filed in the Court though not made available to the defendants and considering that the plaintiffs were in the market selling the product of a purity or standard not known in the public domain, at this stage no severe prejudice will be occasioned to the defendants. Considering that it is the plaintiffs who must make out a strong prima facie case to get an injunction at the interim stage.

9. The next contention which must be considered is whether there is material on record to show that the

defendant Nos. 1, 2 and 3 had received confidential information from the plaintiff and whether they are bound by the negative covenants contained in clauses 3.1 and 3.2 of the respective Agreements with the plaintiffs. The law is well settled that even in the absence of any agreement an employee is bound to maintain secrecy about the confidential information and is not entitled to disclose the same to anybody even after termination of the employment. (See **Merryweather** v. Moore reported in 2 Ch.518 and Amber **Suize and Chemical Company Ltd. v. Astbury Menzel reported in 2 Ch.239.** The confidential information which deserves to be respected must be of such a nature that it is not available at any other source or which is not in public domain. The principles on which the Courts act are formulated in **Saltman Engineering Co. Ltd. & Anr. v. Campbel Engineering Co Ltd., reported in 65 RPC 215.** The said decision lays down that it is perfectly possible to have a confidential document, be it a formula, a plan, sketch, or something of that kind, which is the result of work done by the maker upon materials which may be available for the use of anybody; but what makes it confidential is the fact that the maker of the document has used his brain and thus produced a result which can only be produced by somebody who goes through the same process. If the information is not available to the public and when such information is given to an employee, the employee

is bound to keep the said information confidential. In Seager v. Copydex Ltd. reported in (1967) 2 AER 415. In that case the question was about "Klent" grip. It was found that a good deal of the information which the plaintiff gave to the defendant company was available to the public such as the patent specifications in the Patent office or the "Klent" grip which he sold to anyone who asked. But there was a good deal of other information which was private, such as, the difficulties which had to be overcome in making a satisfactory grip; the necessity for a strong, sharp tooth; the alternative forms of tooth; and the life. The Appeal Court found that though the trial Court had found that the information about alternative grip in the form of a "V - tang" was available, the information about the tooth being sharp enough and strong enough was confidential. This decision squarely applies to the facts of the present case. The general information or the process for making organic titanates is to be found in patents. The improvements and improvisation of the process with which, the said products are manufactured by the plaintiff are secret and confidential. The stand of the defendants was that the defendant Nos. 1, 2 and 3 had only basic knowledge in developing, manufacturing and marketing the the products of the plaintiff more particularly organic titanates. The three defendants are mere college graduates with Second/Third Class Degrees in B.Sc. In

these circumstances it is set out that the three individuals are supposed to have carried in their head information processes, recipe and formula relating not only to the process for manufacture of Organic Titanates but also setting up a plant and machinery for the said purpose would be impossible. Reference is then made to the confidential agreement. Since the parting between the plaintiffs and defendant Nos. 1 to 3 was amicable and the plaintiffs have at no time alleged that the said defendants ever retained any documents or information of the Plaintiffs, the case now set up by the Plaintiffs almost one and half years after the said defendants resigned from the plaintiffs services is clearly inconsistent. It would have been possible to accept the said contention urged on behalf of the defendants. The fact, however, remains as noted earlier that the plaintiffs have been able to establish that the original stand of the defendants that they had gathered the material from public domain could not be believed considering their subsequent shift in the stand in the affidavit. The only plausible presumption at this prima facie stage would be that the defendant Nos. 1 to 3 who were working with the plaintiffs were able to part with the information which they had acquired in the process of their employment with the plaintiff in the manufacture of Organic Titanates. The contention of the defendants on that could will have to be rejected. Once that be the case the defendants

Nos.1 to 3 would be bound by the negative covenants in Clause 3.1 and 3.2 of the respective agreement with the plaintiffs.

10. We may now deal with the defendants contention that the plaintiffs have been unable to satisfy the four factors which the plaintiff has to address to succeed in a breach of confidence action. Reliance for that purpose is placed in the judgment in the case of CMI-Centers for Medical Innovation GmbH v. Phytopharm PLC, (1999) FSR 235.

. Laddie, J., has summarised four points which the plaintiff must prove to succeed in a breach of confidence action namely:-

the plaintiff must identify clearly what is the information he is relying on;

he must show that it was handed over in circumstances of confidence;

he must show that it is the information of the type which can be treated as confidential;

he must show that it was used without his license or there must be a treat to so use it.

. The submission on behalf of the defendants was that in the absence of clear definition of purported confidential information sought to be relied upon by the plaintiffs the defendants would have no means of knowing the scope of the injunctive reliefs sought against him and what he is restrained from doing in the event an injunction is granted. It is pointed out that in the event an injunction is granted the defendants would be subject to action for breach of injunction any time without really knowing what breach he has committed. Reliance for that purpose is placed in the judgment of the Queen's Bench Division in P.A. Thomas & Co. & Ors. vs. Mould & Ors. What was sought in that case was committal of the defendant for breach of injunction. It is in that context that the observation was made that when committal was sought it was essential that the plaintiff should make it absolutely clear and certain what it was that he alleged to be confidential which he sought to protect. We may note that it was the plaintiffs case that the Organic titanates it manufactures are for a certain purity and that they have developed it over the years by constant research. This information, the defendant Nos. 1 to 3 when they joined the plaintiffs had no idea, knowledge or experience in manufacturing and marketing the products. The qualifications possessed by them were extremely basic having regard to the level of specialisation and expertise in developing,

manufacturing and marketing of the products more particularly Organic Titanates. The case of the plaintiff is that after the defendant Nos. 1 to 3 signed the Confidentiality Agreements the plaintiffs disclosed the said confidential information to defendant Nos. 1 to 3 under an obligation of secrecy, trust and confidence. The defendant Nos. 1 to 3 were posted at the plaintiffs plant at Vapi, State of Gujarat where the plaintiff is manufacturing its product Organic Titanates. It has been pleaded in the plaint that the defendant Nos.2 and 3 were actively involved in the manufacturing process of the plaintiffs product for organic titanates and during the course of employment they were also supplied with the confidential information and that the defendant Nos. 1 to 3 were fully trained to produce Organic Titanates. The full information on the production process was given to the defendant Nos. 1 to 3 in order that they can effectively function and produce a quality product. It is true that the specified details of the information conveyed has not been disclosed in the plaint, but has been filed in the Court in a sealed envelope. The fact,however, remains from the material on record that the demand for Organic Titanates is of 15 tonnes which have been supplied by the plaintiffs. The stand of the defendants in their first reply of Lav Shah in paragraph 4 was that they had obtained the information from public domain and that information

disclosed the said patent is sufficient for the manufacture of Organic Titanates of the desired quality. We have earlier recorded a finding that the defendants subsequently shifted this stand. What emerges, therefore, is that there may be some absence of pleadings to sufficiently indicate the process. The defendants prima facie have acquired the process using the confidential information which was imparted by the plaintiffs to defendant Nos. 1 to 3. As noted earlier considering the nature of the material there is no question of calling on the plaintiffs to disclose the secret process at this stage which will result in the secret process being secret no longer. In my opinion, therefore, the plaintiffs have established that the first test laid down by Laddie, J., in CMI-Centers for Medical Innovation GmbH (supra). The second test is also satisfied considering the qualifications which the defendant Nos. 1 to 3 had when they joined the services of the plaintiff and the fact that they working in a plant at Vapi in Gujarat for manufacture of organic titanates. Apart from that the defendants had entered into Confidentiality Agreements. Therefore, both the second and third tests have been satisfied. The last test consequently must follow as the defendant Nos. 1 to 3 could not have disclosed the information which they acquired in the course of their work with the plaintiffs for the manufacture of organic titanates to others including their new employer,

defendant No.4. The mere contention that it is the plaintiffs own case that the defendant No.4 is already having the alleged information and disclosure of the same cannot prejudice the plaintiffs case to my mind is no answer to contend that the plaintiffs ought to have disclosed their information. The issues may arise at the trial, but at this stage all that the plaintiff must satisfy to this Court is that they have a strong prima facie case in their favour.

11. Having said so the question that now arises is whether the plaintiffs have been able to show a strong prima facie case warranting the grant of injunction and on failure to grant the injunction any irreparable loss and injury would be occasioned to them and in whose favour the balance of convenience would lie. The pleadings disclose serious triable issues. For the reasons already disclosed it would be clear that in so far as Organic Titanates are concerned there is sufficient material on record by way of pleadings to show that the plaintiffs had imparted to defendant Nos. 1 to 3 specialised knowledge in the manufacture of organic titanates. Even if the defendant Nos. 1 to 3 had left the employment of the plaintiffs they could not have parted with the knowledge in favour of the defendant No.4 who is now a competitor of the plaintiff in the manufacture and marketing of organic titanates. Before the defendant No.4 came to the market it is the

plaintiffs who practically met the demand for Organic Titanates of about 15 Tonnes as set out by the defendants themselves. It is further clear that the desired level of purity of the product would not be ordinarily in the public domain unless as pleaded by the plaintiffs extensive research was done to reach the desired level of purity. In these circumstances to my mind the plaintiffs who have a plant and are manufactures of organic titanates would suffer irreparable injury if the relief as prayed for is not granted. Mere damages in the instant case would be no answer. In Seager v. Copydex Ltd.(1967) 2 AER 415 was a case of use of information obtained in confidence and which was not available to the public. Part of the information was in the public domain and part was not. Considering the situation Lord Denning M.R., observed thus:-

> "When the information is mixed, being partly public and partly private, then the recipient must take special care to use only the material which is in the public domain. He should go to the public source and get it; or, at any rate, not be in a better position than if he had gone to the public source. He should not get a start over others by using the information which he received in confidence. At any rate, he should not get a start without paying for

it.It may not be a case for injunction but only for damages, depending on the worth of the confidential information to him in saving him time and trouble."

14. Having said so we may now consider what reliefs the plaintiffs would be entitled to. The temporary injunction is sought in terms of what is set out in paragraph 4(c) which apart from Organic Titanates and its sister products namely Tetra N-Butyl Titanate, Tetra ISO Propyl Titanate and Tetra Butyl-Isoproppyl Titanate also in respect of Polyvinyl Formal Polymer, Polyvinyl Butyral Polymer and others as set out therein.The defendants have come out with the case that apart from Organic Titanates they do not manufacture the other products presently. The plaintiffs themselves have nowhere set out that defendant Nos. 1 to 3 were imparted information in so far as Polyvinyl Formal Polymer, Polyvinyl Butyral Polymer and other chemicals. On the contrary the pleading is that they were working at the plant which manufactures Organic Titanates and that plaintiff apprehends that the defendant Nos. 1 to 3 who had access to the plaintiffs other employees who had full knowledge of the said confidential information about plaintiffs other products namely Polyvinyl Formal Polymer, Polyvinyl Butyral Polymer,Polyisocyanates, Wire Enamels and Insulating Varnishes, its variants and mixtures will

seek that information from the buyers of defendant No.4. In so far as these products are concerned, in my opinion, merely because the defendant Nos.1 to 3 have had access to other employees of the plaintiffs would not mean that the plaintiffs had imparted confidential information to defendant Nos. 1 to 3 in so far as those products are concerned or that they have learnt the process whilst working in the factory of the plaintiff. Therefore, in so far as those products are concerned it will not be possible to grant any injunction and the injunction granted on that count will have to be vacated. Apart from that the defendant NO.4 today is neither selling nor exporting the said products. Considering the above, to my mind, the interim relief granted by this Court in terms of prayer clause (a) will have to be restricted only to Organic Titanates or its variants and mixtures. It will also not possible to grant injunction in terms of prayer clause (a)(iii). There is no prima facie strong material to show that the said defendant Nos. 1 and 2 have attempted or sought to induce other employees to commit breach of the contract in the matter of confidential information. The injunction, will be confined as under:-

(i) Pending the hearing and final disposal of the present suit the defendants, by themselves, their servants and agents, representatives, consultants,

distributors and all other persons claiming by, through or under them are restrained by a temporary order of injunction from (i) in any manner utilising, using, imparting, disclosing or taking unfair advantage of the plaintiffs confidential information in the manufacture of Organic Titanates or its variants and mixtures by using the plaintiffs said confidential information to the extent mentioned in paragraph 4(c) of the plaint.

(ii) In any manner selling and/or exporting the said Organic Titanates or its variants and mixtures directly or indirectly to the plaintiffs customers and distributors.

(iii) The Receiver appointed will be continued as Receiver till discharged by specific order of the Court entitled to exercise jurisdiction as per sitting list.

(v) Both Motions accordingly disposed off.

(F.I. REBELLO, J.)